IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4352 of 2006()

CRA.642/2004 THE COURT OF SESSIONS, MANJERI DIVISION (ADHOC II, MANJERI).
ST.3608/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NILAMBUR

REVN. PETITIONER: APPELLANT/ACCUSED:

M.T. SUKUMARAN, S/O.KUNHATHAN VAIDYAR,
NELLIKKATTUTHODIKA HOUSE, NADUVATH P.O.,
WANDOOR, MALAPPURAM DISTRICT.

BY ADVS. M/S.BABU S. NAIR AND DEEPTHI S.MENON

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE:
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1. K. MOHANDAS, S/O. SANKARAN,
KALAPARAMBIL HOUSE, KALLEMPADAM, NILAMBUR P.O.,
MALAPPURAM DISTRICT.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

R2 BY PUBLIC PROSECUTOR SRI.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

CRL.R.P.NO. 4352 OF 2006

Dated this the 7th day of December,2006

O R D E R

The petitioner is the accused in S.T.No.3608 of 2003, on the file of the Court of the Judicial Magistrate of the First Class, Nilambur. The complaint was filed by the first respondent alleging offence under Section 138 of the Negotiable Instruments Act. The trial court found the petitioner guilty for the offence and he was sentenced to undergo simple imprisonment for one month and to pay Rs.35,000/- as compensation to the complainant and in default of payment of compensation, to undergo simple imprisonment for one month. On appeal, the Appellate Court confirmed the conviction. However, the sentence was modified and reduced as imprisonment till the rising of the Court. The direction to pay compensation of Rs.35,000/- and the default

sentence thereof was confirmed.

2. The case of the complainant is that the accused borrowed a sum of Rs.35,000/- and in discharge of that liability Ext.P1 cheque was issued. On presentation of the cheque, it was dishonoured on the ground of insufficiency of funds in the account of the accused. Ext.P4 notice was issued to the accused. The accused received notice, but he did not send any reply, nor did he repay the amount. Hence the complaint was filed.

3. The complainant was examined as PW1 before the trial court and Exts.P1 to P6 were marked. There was no defence evidence on the side of the accused. The suggestion made in the cross examination of PW1 is that the accused had given a blank cheque to one Kunhappa when he had occasion to borrow Rs.7,000/- from him and that the cheque was misused by the complainant for filing the

present complaint. This contention of the accused is not substantiated by any acceptable evidence. The trial court has rightly drawn the presumption under Section 139 of the Negotiable Instruments Act. The accused failed to rebut the presumption under Section 139 of the Act. The conviction of the petitioner is, therefore, justified. The Appellate Court also considered the facts and evidence in detail and concurred with the view taken by the trial court. The sentence was reduced by the Appellate Court. No grounds are made out for interference under Section 397 of the Code of Criminal Procedure.

4. Learned counsel for the petitioner submitted that the petitioner is aged more than 62 years and that he finds it difficult to raise funds to pay the compensation amount. A reasonable time is prayed for by the petitioner to deposit the compensation amount. In the facts and

circumstances of the case, I am inclined to grant three months' time to the petitioner to deposit the compensation amount.

In the result, the Criminal Revision Petition is dismissed and the conviction and sentence are confirmed. However, three months' time is granted to the petitioner to pay the compensation amount. The default sentence shall be kept in abeyance for a period of three months.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

CRL.M.C.NO. OF

O R D E R

September, 2006